

REMARKS

Claims 1-39 are pending in the Application, all of which stand rejected by the Office Action mailed June 25, 2009. No claims are amended by this response. Claims 1, 17, and 32 are independent claims, while claims 2-16, 18-31, and 33-39 depend either directly or indirectly from independent claims 1, 17, and 32, respectively.

Applicants respectfully request reconsideration of claims 1-39, in light of the following remarks.

Rejection of Claims Under 35 U.S.C. §103

Claims 1-4, 7, 9-11, 17-19, 22, 24-27, 32, and 34-36 stand rejected under 35 U.S.C. §103(a) as being obvious over Lee *et al.*, U.S. Publication No. 2004/0031029 (hereinafter "Lee") in view of Abboud *et al.*, U.S. Patent No. 6,636,958 (hereinafter "Abboud"), further in view of Meyerson, U.S. Patent No. 6,976,251 (hereinafter "Meyerson"). Claims 5, 16, 20, 31, 33, and 37 stand rejected under 35 U.S.C. §103(a) as being obvious over Lee in view of Abboud, further in view of Meyerson, further in view of Yang *et al.*, U.S. Publication No. 2003/0065738 (hereinafter "Yang"). Claims 8 and 23 stand rejected under 35 U.S.C. §103(a) as being obvious over Lee in view of Abboud, further in view of Meyerson, further in view of Kikinis, U.S. Patent No. 5,708,776 (hereinafter "Kikinis"). Claims 6, 12, 13, 15, 21, 28, 30, 38, and 39 stand rejected under 35 U.S.C. §103(a) as being obvious over Lee in view of Abboud, further in view of Meyerson, further in view of Nakabayashi *et al.*, U.S. Patent No. 6,249,817 (hereinafter "Nakabayashi"). Claims 14 and 29 stand rejected under 35 U.S.C. §103(a) as being obvious over Lee in view of Abboud, further in view of Meyerson, further in view of Nakabayashi, further in view of Yang. For at least the reasons discussed below, Applicants respectfully traverse those rejections, and further

respectfully submit that the Office Action does not provide a *prima facie* case of obviousness for those claims.

1. Claim 1 and its Dependent Claims

Applicants first address claim 1 and the claims that depend therefrom. Applicants begin by noting that claim 1 recites an electronic device network comprising, *inter alia*, a plurality of electronic devices, wherein the update agent employed is selected to correspond to a type of update information received by the electronic device from the at least one of the plurality of servers, the electronic device network of claim 1 also comprising, *inter alia*, a database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device. Applicants respectfully submit that the Office Action does not provide a *prima facie* case of obviousness, at least because the cited prior art combinations do not teach, suggest, or otherwise render obvious at least two aspects recited by claim 1: “wherein **the update agent employed is selected to correspond to a type of update information received by the electronic device** from the at least one of the plurality of servers”; and “**a database in each of the plurality of electronic devices** for accessing the **plurality of provisioned update agents** in a corresponding electronic device.”

Previous Office Actions relied upon Meyerson as teaching “wherein the update agent employed is selected to correspond to a type of update information received by the electronic device from the at least one of the plurality of servers.” After Applicants demonstrated the shortcomings of the previously cited references in an Appeal Brief, a non-final Office Action was mailed, relying on Meyerson in part, and also relying on newly cited art. Applicants respectfully submit that neither Meyerson nor Abboud (the newly cited reference) teach, suggest, or otherwise render obvious at least this aspect of the presently claimed subject matter.

The Office Action recognizes that Lee does not teach “the update agent is selected.” (See Office Action at p. 5.) Also, in responding to Applicants’

demonstration in the Appeal Brief that Meyerson does not teach selection, the Office Action states, "The examiner has cited a new prior art, "Abboud", for the 'selection' feature." (See Office Action at p. 2.) Thus, the Office Action recognizes that neither Lee nor Meyerson teach "...the update agent is selected..." as recited by claim 1, and relies solely on Abboud for that aspect of the presently claimed subject matter.

Applicants respectfully submit that Abboud does not remedy the deficiencies in the teachings of Lee and Meyerson. Explaining its reliance on Abboud, the Office Action states as follows:

Lee teaches updating software for network devices, but he does not mention 'the update agent employed is selected' specifically, however, Abboud teaches it in an analogous prior art, see Abboud's Figure 6, and description in column, lines 19-33, "FIG. 6 illustrates an appliance server console or user interface 600 by which a user/server personnel is able to initiate the automatic re-provisioning operation on the server. As shown, user interface 600 includes a display of available applications 601 and a selection of available options 603 to initiate various re-provisioning features executed via the re-provisioning utility. In order to accept a request from a user and perform a re-provisioning operation for the selected appliance server, the user interface 600 accepts user input (mouse-clicks, keyboard input, etc.) and communicates the request to the console agent of the selected appliance server (*selecting update agent*). The agent accepts the re-provision request, performs the necessary re-provisioning functions utilizing the re-provisioning utilities outlined above, and then messages the result back to the user."

(Office Action at p. 6; emphasis in original.) Applicants respectfully traverse these assertions for a number of reasons. For example, the cited portion is utterly silent with respect to an update agent, let alone selection of an update agent. This is even more so in light of the other requirements of claim 1. Claim 1 expressly recites "a plurality of update agents **resident in the electronic device**." However, the Office Action relies on a "selected appliance server" as teaching "selecting update agent." Such an appliance server is not an update agent as claimed, and, further still, in any

event, is not an update agent **resident in the electronic device** as explicitly required by claim 1. Moreover, claim 1 recites that the update agent is selected “to correspond to a type of update information received by the electronic device.” In Abboud however, the “appliance server” (the purported selected update agent) is “selected” before any purported “update information” is received, and therefore cannot be selected to correspond to update information that has already been received, as required by claim 1 (“...to correspond to a type of update information received by the electronic device...”). Further, the “console agent” of Abboud is not selected, it is merely the “console agent of the selected appliance server.” In Abboud, an appliance server is selected, not an update agent. Nor does the cited portion of Abboud provide any teaching of a plurality of update agents resident on an electronic device to be updated, as required by claim 1.

Applicants also respectfully submit that Meyerson does not teach, suggest, or otherwise render obvious a “database...” as fully set forth by claim 1. Explaining its rationale for maintaining its continued reliance on Meyerson as teaching “a database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device,” the Office Action states as follows:

See Meyerson’s column 2 lines 36-38, “The software updates may then be downloaded and installed automatically,” – it’s inherent that Meyerson’s teaching has to have a database in each of the corresponding electronic devices in order to accommodate the downloaded and installed software updates.

(Office Action at p. 3.) Applicants respectfully submit such an assertion cannot properly support a *prima facie* finding of obviousness. As an initial matter, as Applicants have demonstrated in previous submissions, such a database is not inherent in Meyerson. For example, as also discussed in previous submissions, the mere fact that a certain result or characteristic **may** be present in the prior art is not sufficient to establish inherency. See MPEP §2112. To establish inherency, it must

be clear that the missing descriptive matter is **necessarily** present in the reference, and that it would be recognized as so by persons of ordinary skill in the art. *Id.* Inherency may not be established by probabilities or possibilities. *Id.* To properly rely upon a theory of inherency, the Office Action must provide a basis in fact and/or technical reasoning to reasonably support that the alleged inherent characteristic **necessarily** flows from the cited art. *Id.*

As also discussed in previous submissions, Applicants respectfully submit the mere downloading and installing of updates automatically does not inherently require, or make necessary, a database. Further still, claim 1 does not just recite a database. Claim 1 recites “a database **in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device.**” Even if some form of database were somehow assumed, *arguendo*, to be present in Meyerson (which Applicants do not concede), such a database would not necessarily be “a database in each of the plurality of electronic devices for accessing the plurality of provisioned update agents in a corresponding electronic device.” Applicants respectfully submit that the Office Action does not establish that such a database is inherent in Meyerson, and that such a database is indeed not inherent in Meyerson. Applicants further respectfully submit that the Office Action does not present a *prima facie* case of obviousness, and that the cited references do not teach, suggest, or otherwise render obvious a database as fully set forth by claim 1.

Applicants further respectfully submit that the Office Action does not assert any of the additionally cited references as remedying these previously discussed shortcomings, and further respectfully submit that the references cited in connection with certain dependent claims do not remedy the above discussed deficiencies. For at least the above reasons, as well as those discussed in previous submissions, Applicants respectfully submit that the Office Action does not present a *prima facie* case of obviousness for claim 1 or any claim that depends from claim 1; that the cited reference do not teach, suggest, or otherwise render obvious those claims; and that

those claims are allowable. Applicants further respectfully submit that claims dependent from claim 1 are further allowable for additional reasons.

For example, claim 10 recites “[t]he network according to claim 1, wherein the electronic device is adapted to invoke an update agent based upon an update currently being processed provided that the update agent is provisioned in the electronic device.” Responding to Applicants’ previous demonstration of shortcomings in Meyerson, and explaining its continued reliance on Meyerson as teaching the additional aspects of claim 10, the Office Action states as follows:

Meyerson’s disclosure teaches that update can be implemented without the initial request [from] the agent, see Meyerson’s Abstract, “A method of updating computer software includes downloading software update information through a network, such as the Internet, to a user’s computer. The download is preferably done periodically and automatically.” Further see column 2 lines 36-38, “The software updates may then be downloaded and installed automatically, if previously authorized by the user”; also see column 6, lines 29-31, “It is expected, however, that most users will authorize automatic installation for the most critical updates and that this will be the default setting.” – no request or query will be needed, the update will be processed without an initial request from the agent.

(Office Action at p. 3.) Applicants respectfully submit that such an assertion does not properly support a *prima facie* finding of obviousness. Claim 10 recites that the update is invoked based upon an update currently being processed. As an initial matter, Applicants respectfully submit that whether or not the update is “automatic” has to do with activity related to the user, not the update agent. In any event, the first step after the start, for example, in Fig. 1 (the only figure of Meyerson), is block 12, wherein “the intelligent update agent sends a software update query comprising a request for software update information.” (See Meyerson at 4:10-12.) The criticality checks or the determination of whether or not automatic installation is authorized does not come until later in the flow of Meyerson. (See Fig. 1, e.g., at steps 12, 18, 30.) Regardless of whether the installation is “automatic” or not, it is still the “intelligent

update agent” that sends the initial request. Thus, the “update agent” of Meyerson cannot be invoked based upon an update currently being processed, because it is the “update agent” of Meyerson that requests software update information before any update is processed, regardless of whether or not such an update is “automatic.”

2. Claim 17 and its Dependent Claims

Independent claim 17 recites a method employing a plurality of update agents in an electronic device in an electronic device network comprising, *inter alia*, **selecting at least one of a plurality of update agents resident in the electronic device** to modify a first version of one of software and firmware in the electronic device to produce an update version, wherein **each of the plurality of update agents is arranged to process a corresponding type of update information received from the at least one of a plurality of servers**, and provisioning the plurality of update agents with parameters and data used to facilitate update operations in the electronic device, **wherein a database is used for accessing the plurality of provisioned update agents**. In rejecting claim 17, the Office Action generally relies on the same grounds used to reject claim 1. (See Office Action at p. 13). For at least the reasons discussed above with respect to claim 1, Applicants respectfully submit that the cited references, either alone or in combination, do not teach, suggest, or otherwise render obvious the subject matter of claim 17 or any of its dependent claims. As such, Applicants respectfully request the withdrawal of the rejection of claim 17, as well as claims 18-31 that depend from claim 17, under 35 U.S.C. §103.

3. Claim 32 and its Dependent Claims

Independent claim 32 recites an electronic device operable in an electronic device network comprising, *inter alia*, code resident in and executable by the electronic device comprising a plurality of **provisioned update agents selectable to cause processing of a corresponding type** of received update information, **wherein a database in the electronic device enables accessing of the plurality of provisioned update agents**, and wherein a provisioned update agent is **selected to**

perform an update based upon the type of the received update information. In rejecting claim 32, the Office Action generally relies on the same grounds used to reject claim 1. (See Office Action at p. 16). For at least the reasons discussed above with respect to claim 1, Applicants respectfully submit that the cited references, either alone or in combination, do not teach, suggest, or otherwise render obvious the subject matter claimed by independent claim 32 or any claim dependent therefrom. As such, Applicants respectfully request the withdrawal of the rejection of claim 32, as well as claims 33-39 that depend from claim 32, under 35 U.S.C. §103.

Conclusion

In general, the Office Action makes various statements regarding claims 1-39 and the cited references that are now moot in light of the above. Thus, Applicants will not address such statements at the present time. However, Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicants believe that all of claims 1-39 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, Applicants invite the Examiner to contact the undersigned at (312) 775-8000 for an interview.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: September 23, 2009

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